

CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

Statement of Explanation

Changes to Title 18. Public Revenue

Regulation 4500, *Definitions*

Regulation 4504, *Determination of Arm's Length Transaction*

Regulation 4507, *Request for Information and Records*

Regulation 4508, *Appeal - Denial of License*

Regulation 4509, *Non-Arm's Length Transfer - Sales*

Regulation 4600, *Issuance and Contents of a Notice of Violation or Warning Notice*

Regulation 4609, *Right to Appeal*

Regulation 4700, *Appeal - Excise Taxes Division*

A. Factual Basis

California Code of Regulations, title 18, section (Regulation) 4500, *Definitions*, generally provides the definitions that apply to chapter 9.5 (commencing with Regulation 4500) of division 2 of title 18 of the California Code of Regulations, which prescribes the application of the Cigarette and Tobacco Products Licensing Act of 2003 (division 8.6 (commencing with section 22970) of the Business and Professions Code) (Licensing Act). Regulation 4500, subdivision (i), defines the term “control” or “controlling” by reference to Business and Professions Code (BPC) section 22971’s definition for the same term. However, BPC section 22971, subdivision (p), defining the term “control” or “controlling,” was recently renumbered as BPC section 22971, subdivision (d), by Statutes 2010, chapter 607 (Assem. Bill No. 2733), section 1. Accordingly, the State Board of Equalization (Board) proposes to change the definition for the term control in Regulation 4500, subdivision (i), under California Code of Regulations, title 1, section (Rule) 100, so that it now correctly provides that “‘Control’ or ‘controlling’ means control or controlling as defined in Business and Professions Code section 22971, subdivision (d),” instead of as defined in BPC section 22971, subdivision (p).

As a result of a department-wide reorganization of the Board’s Property and Special Taxes Department on July 1, 2010, administration of the Licensing Act was assigned to a newly established Special Taxes and Fees Division, in place of the department’s Excise Taxes Division. Therefore, the definition of “Excise Taxes Division staff” in Regulation 4500, subdivision (k), is no longer applicable to chapter 9.5. Furthermore, the Board determined that the term “Excise Taxes Division” is currently used throughout chapter 9.5, but the term “Excise Taxes Division staff” is not used in chapter 9.5. Accordingly, the Board proposes to delete subdivision (k) of Regulation 4500 defining “Excise Taxes Division staff,” and add a new subdivision (t) to Regulation 4500 defining “Special Taxes and Fees Division,” under Rule 100. The Board proposes to renumber subdivisions (l) through (t) of Regulation 4500 as subdivisions (k) through (s), respectively, under Rule 100. The Board also proposes to replace the term “Excise Taxes Division” with the term “Special Taxes and Fees Division” everywhere the term appears in chapter 9.5 (Regulations 4504, 4507, 4508, subds. (a) and (c), 4509, 4600, 4609, subds. (a), (a)(1)(A) and (B), and (a)(2)(A) and (B), and 4700, subds. (c) – (h), and title) and change the

word “an” to the word “a” in Regulation 4700, subdivision (c), to conform to the revised text, under Rule 100.

The foregoing changes are appropriate for processing under Rule 100 because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, these changes are necessary to provide a correct statutory reference and to reflect the July 1, 2010, reorganization of the Board’s Property and Special Taxes Department.

B. Proposed Changes to Regulations 4500, 4504, 4507, 4508, 4509, 4600, 4609, and 4700

Proposed Changes to Regulations 4500, 4504, 4507, 4508, 4509, 4600, 4609, and 4700:

Regulation 4500. Definitions.

In addition to the definitions in Business and Professions Code section 22971, the following definitions shall apply to this chapter:

(a) . . . (unchanged).

(b) . . . (unchanged).

(c) . . . (unchanged).

(d) . . . (unchanged).

(e) . . . (unchanged).

(f) . . . (unchanged).

(g) . . . (unchanged).

(h) . . . (unchanged).

(i) “Control” or “controlling” means control or controlling as defined in Business and Professions Code section 22971, subdivision (~~p~~d).

(j) . . . (unchanged).

~~(k) “Excise Taxes Division staff” means an employee or employees of the State Board of Equalization assigned to the Excise Taxes Division of the Property and Special Taxes Department.~~

~~(k)~~ (l) “Finding” or “Findings” means a determination that a violation of the Act has occurred. This can occur by default if no appeal is made from a Notice of Violation or Warning Notice, or by a final decision made pursuant to Regulations 4700, 4701, or 4702.

~~(m)~~ (n) “Fine” means any fine imposed by the Board pursuant to the Act.

(~~nm~~) “Investigations Division staff” means an employee or employees of the State Board of Equalization assigned to the Investigations Division of the Legal Department.

(~~on~~) “Licensee” means a licensee as defined in Business and Professions Code section 22971, subdivision (j).

(~~po~~) “License subject to a civil or criminal citation” means a license as to which a citation has been issued but no final determination of violation has yet been entered into the licensee's or unlicensed person's permanent record.

(~~qp~~) “Notice of Violation” means the document sent to a licensee or unlicensed person referring to the citation issued, the charged violation(s), the penalty or penalties to be imposed, and the licensee's or unlicensed person's appeal rights.

(~~rq~~) “Offense” means a criminal conviction of violations of the Act and/or civil findings of violations of the Act.

(~~sr~~) “Person” means a person as defined in Revenue and Taxation Code section 30010.

(~~ts~~) “Regulation” means a section of title 18 of the California Code of Regulations.

(t) “Special Taxes and Fees Division” means the Special Taxes and Fees Division of the State Board of Equalization’s Property and Special Taxes Department.

(u) . . . (unchanged).

(v) . . . (unchanged).

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22970, 22971, 22974.5, 22978.7 and 22979.7, Business and Professions Code; and Section 30010, Revenue and Taxation Code.

Regulation 4504. Determination of Arm's Length Transaction.

The ~~Excise Taxes Division~~Special Taxes and Fees Division shall determine whether the transfer of a business was pursuant to an arm's length transaction, utilizing the criteria set forth in Regulations 4505 and 4506.

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code.

Regulation 4507. Request for Information and Records.

When a business's license is suspended, revoked, or is subject to civil or criminal citation, then the parties to a proposed or completed transfer or sale of the business must, at the Board's request, provide all relevant information on the transfer or sale to the ~~Excise Taxes Division~~Special Taxes and Fees Division, including, but not limited to, the purchase agreement, all escrow documents and proof of payment or tender of the purchase consideration.

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code.

Regulation 4508. Appeal - Denial of License.

(a) If the ~~Excise Taxes Division~~Special Taxes and Fees Division determines that a new license should not be issued pursuant to Regulation 4503, then it shall notify the applicant of such determination and deny the application for issuance of a new license for the applicant's business. The applicant may petition for a redetermination within 30 days from the date notice of the denial is mailed or personally delivered to the applicant. The denial of the application shall become final if a petition for redetermination is not filed before the expiration of the 30-day period.

(b) . . . (unchanged).

(c) The Board shall reconsider the determination of the ~~Excise Taxes Division~~Special Taxes and Fees Division pursuant to its administrative appeals process set forth in article 6 (commencing with Regulation 5260) of chapter 2 of division 2.1 of title 18 of the California Code of Regulations and shall grant the applicant an oral hearing if timely requested within 30 days of the date the Decision and Recommendation issued by the Appeals Division is mailed to the applicant. Any Board hearing will be governed by the rules set forth in Regulations 5270, 5271, 5522.4 through 5523.1, 5523.4 through 5523.7, 5541 through 5551, 5563, subdivisions (a) and (b), 5561 through 5563, 5571, 5572, and 5576.

(d) . . . (unchanged).

(e) . . . (unchanged).

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code.

Regulation 4509. Non-Arm's Length Transfer - Sales.

The ~~Excise Taxes Division~~Special Taxes and Fees Division's determination that a licensee's transfer of a business with a suspended or revoked license was not at arm's length may establish grounds for an additional violation of the Act. The Investigations Division may issue a citation for a violation of Business and Professions Code section 22980.2, subdivision (c), if the business is found selling cigarettes or tobacco products without a license or after a notification of suspension or revocation of a license.

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22973.1, 22977.2, 22979 and 22980.2, Business and Professions Code.

Regulation 4600. Issuance and Contents of a Notice of Violation or Warning Notice.

The Investigations Division shall forward a copy of a citation issued to a licensee or unlicensed person to the ~~Excise Taxes Division~~Special Taxes and Fees Division, which shall prepare and mail a Notice of Violation or Warning Notice to the cited licensee or unlicensed person.

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22974.7, 22978.7 and 22979.7, Business and Professions Code.

Regulation 4609. Right to Appeal.

(a) Every licensee or unlicensed person has the right to appeal any alleged violation of the Act, and may appeal a Warning Notice or Notice of Violation issued by the ~~Excise Taxes Division~~Special Taxes and Fees Division, as specified below:

(1) . . . (unchanged):

(A) The first appeal shall be to the ~~Excise Taxes Division~~Special Taxes and Fees Division;

(B) If the licensee or unlicensed person disagrees with the Notice of First Decision, as specified in Regulation 4700, subdivision (h), issued by the ~~Excise Taxes Division~~Special Taxes and Fees Division, the licensee or unlicensed person may make a second appeal to the Appeals Division; and

(C) . . . (unchanged).

(2) . . . (unchanged):

(A) The first appeal shall be to the ~~Excise Taxes Division~~Special Taxes and Fees Division; and

(B) If the licensee or unlicensed person disagrees with the Notice of First Decision issued by the ~~Excise Taxes Division~~Special Taxes and Fees Division, the licensee or unlicensed person may make a second appeal to the Appeals Division for a final decision.

(b) . . . (unchanged).

(c) . . . (unchanged).

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22974.7, 22978.7 and 22979.7, Business and Professions Code.

Regulation 4700. Appeal - ~~Excise Taxes Division~~Special Taxes and Fees Division.

(a) Time For Filing. . . . (unchanged).

(b) Failure to File a Timely Appeal. . . . (unchanged).

(c) Request for an ~~Excise Taxes Division~~Special Taxes and Fees Division Appeal. The Request for Appeal shall state the specific grounds upon which the licensee or unlicensed person is contesting the Warning Notice or Notice of Violation and shall be accompanied by any and all documentation and written argument to be considered in support of the appeal. The Request for Appeal shall be signed by the licensee or unlicensed person or by an authorized representative.

(d) Notice of Conference. After receiving a timely Request for Appeal the ~~Excise Taxes Division~~Special Taxes and Fees Division will schedule a conference and send a Notice of Conference stating the date and time of the scheduled conference to the licensee or unlicensed person. The Notice of Conference shall be sent to the licensee or unlicensed person at least 15 days prior to the date of the scheduled conference.

(e) Conference. The conference is intended to be an informal, non-adversarial proceeding with a discussion of the relevant facts and applicable laws and regulations. Written statements made under penalty of perjury may be submitted, but subpoenas are not issued for conferences, nor is sworn testimony required. The conference will be conducted by telephone and shall not be recorded and/or transcribed by the ~~Excise Taxes Division~~Special Taxes and Fees Division. The conference may be recorded and/or transcribed by the licensee or unlicensed person, but only if the licensee or unlicensed person agrees to provide a copy of the recording or transcript to the ~~Excise Taxes Division~~Special Taxes and Fees Division.

(f) The ~~Excise Taxes Division~~Special Taxes and Fees Division may grant one request to reschedule or postpone a conference. If a request is granted, the conference shall be rescheduled or postponed so that it can be held within 15 days of the date the conference was scheduled to be held prior to the granting of the request, unless the Chief of the ~~Excise Taxes Division~~Special Taxes and Fees Division or his or her designee approves of a later date.

(g) During a conference, the ~~Excise Taxes Division~~Special Taxes and Fees Division may grant a request for additional time to submit additional evidence. If additional time is granted, the evidence shall be submitted to the ~~Excise Taxes Division~~Special Taxes and Fees Division no later than 7 days after the conference date.

(h) Decision. Following the conference, the ~~Excise Taxes Division~~Special Taxes and Fees Division shall issue a Notice of First Decision. The Notice of First Decision will set forth the ~~Excise Taxes Division~~Special Taxes and Fees Division's decision, the applicable penalty or penalties, and the licensee's or unlicensed person's appeal rights.

(i) . . . (unchanged).

(j) Failure to File a Timely Appeal. . . . (unchanged).

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22974.7, 22978.7 and 22979.7, Business and Professions Code.